



Appeal Decision

Site visit made on 4 March 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2024

Appeal Ref: APP/R1845/X/22/3313704

**Kings Arms, 21 Redhouse Road, Stourport On Severn, Worcestershire
DY13 0NN**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Marstons PLC against the decision of Wyre Forest District Council.
 - The application ref 22/0109/CLE, dated 10 February 2022, was refused by notice dated 28 July 2022.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is 'the use of the land in breach of condition 6 to the planning permission issued on 15th January 1991 under reference WF 941/90'.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the matter constituting a failure to comply with a condition which is considered to be lawful.

Preliminary Matters

2. I have taken the description from the Council's decision notice as this best describes what the appellant is seeking.
3. In this type of appeal, the onus of proof is firmly upon the appellant. The relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under s195. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

Background and Main Issue

4. On the 15 January 1991 planning permission¹ was granted for the "Construction of bowling green on land adjoining car park, Kings Arms Public House, Redhouse Road, Stourport". This permission was subject to a number of conditions, including condition 6 which states:

"The bowling green hereby approved shall be used only for the purpose of playing bowls and shall not be used for any other purpose whatsoever, to the satisfaction of the local planning authority".

¹ Council Reference: WF.941/90

5. The main issue is whether the Council's refusal to grant an LDC was well-founded. This turns on whether the appellant can demonstrate, on the balance of probabilities, that at the time of the application the condition has been breached continuously for any 10-year period, without significant interruption, so as to be immune from enforcement action.
6. A breach of condition is subject to a 10-year immunity period under section 171B(3) of the 1990 Act. Pursuant to section 171B(3) no enforcement action may be taken after 10 years beginning with the date of the breach.

Reasons

7. The appellant's case is that the use of the land as a bowling green has been abandoned, and that from 2009 the land has instead been used for various purposes ancillary to the public house. These include use as a junior football pitch, holding various events, and as a beer garden. The appellant has submitted evidence for a period in excess of ten-years immediately prior to the submission of the LDC application. This includes various aerial photographs, Google Street View images, social media posts, and nine statutory declarations from local residents and users of the public house.
8. The Council accepts that the land has on occasions been used for purposes other than a bowling green. However, the Council does not accept that there is sufficient evidence of the condition being breached continuously, as there appears to be long periods where, although not used as a bowling green, there has been no alternative use. The Council refer to the cases of *Thurrock*² and *Swale*³ concerning the Council's ability to take enforcement action at any time during the ten-year period.
9. The caselaw in relation to abandonment is well established⁴. The mere cessation of a use is not development but there can be abandonment if a building or land "*remains unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned.*"⁵
10. When determining whether a use has been abandoned, it is appropriate to consider four criteria: the period of non-use; the physical condition of the land or building; whether there had been any other use; and the owner's intentions as to whether to suspend the use or to cease it permanently. The test of the owner's intentions is objective and not subjective.
11. It is clear from the evidence that the land has not been used for playing bowls since at least 2009. In addition, it is apparent that the physical condition of the land changed significantly from around 2009 onwards. Aerial images dated 1999, 2004, 2005, and 2006 all show what appears to be a maintained bowling green.
12. The Street View image from August 2009 clearly shows a change in the physical condition of the land, with football goals present and there being no discernible features of a bowling green, such as the presence of a ditch around its perimeter. This is further corroborated by several aerial images which

² *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226

³ *Swale BC v FSS & Lee* [2005] EWCA Civ 1568

⁴ *Panton & Farmer v SSETR & Vale Horse DC* [1999] JPL 461, *Trustees of Mynach Estate v Taff-Ely BC* [1985] JPL 40 and *Hughes v SSETR* [2000] 80 P&CR 397

⁵ *Hartley v MHLG* [1970] 1QB 413

continue to show the goals on site until at least 2014. Post 2014, although the football goals were removed there is no evidence to suggest that the land was returned to a bowling green. Instead, the evidence indicates that it was continued to be used as an extension to the beer garden of the public house for ancillary activities.

13. Finally, with regards to the owners' intentions, several of the statutory declarations detail that following the retirement of the former landlord Mr Whetton in around 2006/2007 the bowling team was disbanded. Furthermore, subsequent landlords displayed no intention of re-introducing the bowling green and instead used the land for activities associated with the public house.
14. When considering all the above factors, in my view, the use of the land as a bowling green was abandoned at some point around 2009. It is further clear from the evidence that the land was subsequently incorporated as part of the beer garden of the public house and was used for various associated activities including a dog show, children's play area, junior football pitch, and other events for a period in excess of ten years.
15. The Council's view is that whilst the bowling green was used for other activities there were long periods when, although not used as a bowling green, there was no alternative use. In particular, reference is made to the images provided showing the football goals not in actual use and that other events were infrequent and only held during fine weather. Consequently, the Council considers that this results in periods during which they could not have taken enforcement action, and therefore, a continuous period of ten years has not been demonstrated by the appellant.
16. It is apparent from *Thurrock* and *Swale* that the test of whether the local planning authority would have been able to take enforcement action during the immunity period is central to a decision on whether a lawful right has accrued. The key principle is that time does not run for the purposes of s171B during periods when the local planning authority would be unable to take enforcement action because the breach of planning control has ceased. It is for that reason that a breach of planning control must continue throughout the immunity period. If a breach of condition ceases the clock stops.
17. I am not persuaded by the Council's assertion that enforcement action could not have been taken during the requisite ten-year period. A fact and degree assessment has to be made on whether there were any interruptions to the breach of condition. I accept the Council's point that simply not using the bowling green or failing to maintain it would not result in a breach of condition. In such circumstances it would remain as a bowling green. Nevertheless, for the reasons stated above I find that in this case matters went beyond simply not using the site, and the bowling green use was abandoned and subsequently used for purposes ancillary to the public house.
18. Accordingly, I consider that it would have been apparent to anyone visiting the site after around 2009 that the land was no longer being used for playing bowls and was instead used for purposes in connection with the public house. The fact that the appeal site may not have been in active use every day, for example the football goals not being used or patrons of the public house not using the land, is not unusual or uncommon particularly during times of inclement weather. It would also not alter the site's use and is not dissimilar to when the land was laid out as a bowling green when there would have been

periods, such as the winter months, when the bowling green was not in active use.

19. An enforcement notice can lawfully be issued even if, at the moment of issue, the activity objected to is not going on, for example due to inclement weather or when a business premises is closed to the public. As such, it follows that these periods where the site may not have been in active use cannot be considered an interruption to the continuous use of the site.
20. I therefore consider that the evidence provided by the appellant demonstrates, on the balance of probabilities, that the condition has been breached continuously for a 10-year period, without significant interruption, so as to be immune from enforcement action.

Conclusion

21. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of "*the use of the land in breach of condition 6 to the planning permission issued on 15th January 1991 under reference WF 941/90*" was not well-founded and that the appeal succeeds. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

David Jones

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 10 February 2022 the matter described in the First Schedule hereto, constituting a failure to comply with a condition or limitation subject to which planning permission has been granted, in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(3) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the 15 January 1991 planning permission was granted for the "Construction of bowling green on land adjoining car park, Kings Arms Public House, Redhouse Road, Stourport". This permission was subject to condition 6 which states: "The bowling green hereby approved shall be used only for the purpose of playing bowls and shall not be used for any other purpose whatsoever, to the satisfaction of the local planning authority".

The evidence has demonstrated, on the balance of probabilities, that the land has not been used only for the purpose of playing bowls but has instead been in use for purposes ancillary to the public house, for a continuous period of at least ten years before 10 February 2022 (the date of the application).

Signed

David Jones

Inspector

Date: 21 May 2024

Reference: APP/R1845/X/22/3313704

First Schedule

The use of the land in breach of condition 6 to the planning permission issued on 15th January 1991 under reference WF 941/90.

Second Schedule

Land at Kings Arms, 21 Redhouse Road, Stourport On Severn, Worcestershire
DY13 0NN

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 or 187A of the 1990 Act, on that date.

This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 21 May 2024

by David Jones BSc (Hons) MPlan MRTPI

**Land at: Kings Arms, 21 Redhouse Road, Stourport On Severn, Worcestershire
DY13 0NN**

Reference: APP/R1845/X/22/3313704

Scale: Not to Scale

